

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

7 TERRIE R. SPONCEY,) 3:10-cv-00478-ECR-WGC
8 Plaintiff,)
9 vs.) **Order**
10 BANNER-CHURCHILL HOSPITAL, LAURA)
CARTER, DEBBIE TABBERT, DIANE)
11 PETERS, CLAIRE BEHEIMER, KATHY)
VALENTINE and DOES I-X and ABC)
12 CORPORATIONS I-V,)
13 Defendants.)
14)

Plaintiff filed her initial complaint (#1) on August 2, 2010,
16 and an amended complaint (#4) on October 4, 2010. On August 12,
17 2011, the Court dismissed (#30) Plaintiff's first amended complaint
18 (#4), but granted Plaintiff leave to amend. Plaintiff filed her
19 second amended complaint (#37) on September 22, 2011, alleging
20 violations of the ADA, FMLA, right to privacy, and a claim for
21 breach of contract.

22 On July 2, 2012, the Court dismissed Plaintiff's second amended
23 complaint (#37), but again granted Plaintiff leave to amend to cure
24 the deficiencies identified in her second amended complaint (#37).
25 At that time, the Court strongly considered dismissing the action
26 without leave to amend, as Plaintiff had been given leave to amend
27 previously and had again failed to submit a complaint that passes
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1 muster. To date, Plaintiff has not filed her amended complaint. On
2 July 27, 2012, Defendants filed a Motion for Involuntary Dismissal
3 Pursuant to Federal Rule of Civil Procedure 41(b) (#46), requesting
4 that the Court dismiss the action because Plaintiff has failed to
5 timely amend her complaint.

6 On July 27, 2012, Plaintiff filed an Ex Parte Motion to
7 "Enlarge Time to File Notice of Appeal" (#47), claiming that
8 although the time to file a notice of appeal would expire on August
9 1, 2012, Plaintiff has not had the opportunity since the Court's
10 Order (#37) dismissing her complaint to discuss any basis Plaintiff
11 might have for appeal due to "congested calendar, other pressing
12 deadlines and a brief period of vacation on the part of plaintiff's
13 counsel." (Ex Parte Mot. at 2 (#47).) Plaintiff's Motion (#47)
14 does not mention her failure to file an amended complaint but only
15 requests an enlargement of time to file a notice of appeal. Federal
16 Rule of Appellate Procedure 4(a)(5) allows the court to extend the
17 time to file a notice of appeal if a party so moves no later than 30
18 days after the time prescribed by Rule 4(a) expires, and shows
19 excusable neglect or good cause.

20 Final judgment had not been entered in this case. The Order
21 (#37) Plaintiff appears to wish to appeal was an order dismissing
22 Plaintiff's claims, some with prejudice and others without.
23 Plaintiff does not mention or address her failure to file an amended
24 complaint, but requests only that her time to appeal be extended.
25 Because final judgment had not been entered, her Ex Parte Motion
26 (#47) is moot. Nor will the Court grant Plaintiff additional time
27 to amend her complaint, as Plaintiff has not requested such an

1 extension, and our initial grant of leave to amend was overly
2 generous considering Plaintiff's previous leave to amend.

3 **IT IS, THEREFORE, HEREBY ORDERED** that the Plaintiff's Ex Parte
4 Motion (#47) is **DENIED** as moot.

5 **IT IS FURTHER ORDERED** that Defendants' Motion to Dismiss (#46)
6 is **GRANTED**. Plaintiff has failed to timely file an amended
7 complaint and the action shall be dismissed in its entirety.

8 The Clerk shall enter judgment accordingly.

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11 DATED: August 17, 2012.

Edward C. Reed.
UNITED STATES DISTRICT JUDGE

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